



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of Claims Against the Dealer Bond  
of G and G Auto

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Case No. TR-14-0009

**FINAL DECISION**

On March 28, 2014, Lori Ogden filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of G and G Auto (Dealer). Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in the Merrill Courier, a newspaper published in Lincoln County, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by August 26, 2014. No additional claims were filed. Lori Ogden's claim was forwarded by the Department to the Division of Hearings and Appeals (Division).

On October 2, 2014, the Division issued a Preliminary Determination pursuant to Wis. Admin. Code § Trans 140.26(4)(a). On October 27, 2014, Robert Galella, on behalf of the Dealer, filed an objection to the Preliminary Determination pursuant to Wis. Admin. Code § Trans 140.26(5)(b). Pursuant to Wis. Admin. Code § Trans 140.26(6), a hearing in this matter was conducted on November 19, 2014, in Merrill, Wisconsin.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Robert L. Galella  
G and G Auto  
W4794 Highway "G"  
Merrill, WI 54452

Robert E. Galella  
G and G Auto  
W4794 Highway "G"  
Merrill, WI 54452

Lori Ogden  
N5024 Wilderness Shore Lane  
Irma, WI 54442

Liberty Mutual Insurance Company  
Bond Department  
175 Berkeley Street  
Boston, MA 02116

The Preliminary Determination awarded Lori Ogden \$5,642.38 in her claim against the Dealer. The basis of the award was that the Ogdens experienced problems with the vehicle as soon as they took delivery of it. Robert Galella testified at the hearing that the vehicle was inspected prior to the sale. Although there is no reason to doubt this testimony, either the presale inspection failed to discover the vehicle's defects or the Dealer failed to disclose the discovered defects on the Wisconsin Buyers Guide. The Ogdens have the burden of proof in this matter. The Ogdens testimony at the hearing was credible and satisfied their burden of proof. The Preliminary Determination is affirmed and adopted as the Final Decision in this matter.

#### FINDINGS OF FACT

1. G and G Auto (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities are located at W4794 Highway "G", Merrill, Wisconsin.
2. The Dealer has had a bond in force since March 31, 2008. (Bond #354023018 from Liberty Mutual Insurance Company)
3. On October 29, 2013, Lori Ogden (Ogden) purchased a 2000 Mitsubishi Eclipse automobile, vehicle identification number 4A3AC54L4YE136608, from the Dealer. According to the purchase contract, Ogden paid \$4359.23, including taxes and registration fees, for the vehicle. A Wisconsin Buyers Guide displayed on the vehicle disclosed all the vehicle's systems and equipment as in legal condition and no problems with the vehicle. Ogden titled the vehicle in the name of her daughter, Nicole Ogden, with herself listed as a co-owner. The Wisconsin Buyers Guide indicates that a three month/3000 mile warranty with no deductible is included with the vehicle. On the purchase contract, the warranty was changed to a limited warranty for one month/1000 miles with Ogden paying 50% of the repair costs and a \$100 deductible.
4. After Ogden purchased the vehicle she planned to immediately drive it to Missouri and give it to her daughter. On the drive to Missouri, Ogden first noticed electrical problems with the radio and headlights and then began experiencing steering problems. Ogden was able to drive the vehicle to St. Charles, Missouri and took it to A-One Auto Repair (A-One) to have the problems checked out. A mechanic at A-One advised Ogden that the vehicle had several mechanical problems and was unsafe to drive.
5. Ogden contacted the Dealer about the problems. She believed the Dealer should be responsible for the cost of repairing the vehicle both because the problems occurred immediately after she took delivery of the vehicle and because the Dealer had

sold the vehicle with a warranty. The Dealer refused to consider providing any assistance to Ogden unless the vehicle was brought back to the dealership. Since she had been told the vehicle was unsafe to drive and she could not afford to have the vehicle towed back to the dealership, Ogden decided to have the vehicle repaired by A-One. According to the repair invoice, A-One replaced the vehicle's sub-frame, lower control arms, lower ball joints, sway bar links, and all lug nuts which were stripped and loose. The charge for the repairs was \$1,283.15. Nicole Ogden drove the vehicle back to Wisconsin around Thanksgiving. At that time there were still problems with the vehicle's steering and Nicole kept the vehicle's speed between 40 and 50 miles per hour during the drive.

6. On December 16, 2013, Ogden filed a complaint against the Dealer with the Department. The Department's investigator researched the vehicle's history and discovered an odometer discrepancy. The vehicle had been titled in Illinois until 2011. CarFax and AutoCheck show the vehicle as having 100,000 miles in 2006; an insurance claim in 2009 reports the mileage as 145,000 miles. The vehicle was first titled in Wisconsin in 2011. At that time the mileage was reported as 82,000 miles. The mileage on the vehicle was disclosed as 94,507 miles at the time Ogden purchased it.

7. On December 20, 2013, the Department investigator assigned to Ogden's complaint inspected the vehicle at Ogden's home. The investigator noted that the rear tires on the vehicle were severely worn and all four tires were mismatched. In addition to the repairs made by A-One, Ogden reported that the vehicle's headlights, parking brake, and radio were inoperable and the sunroof leaked. The investigator then visited the Dealer to discuss Ogden's complaint. Arrangements were made to have the vehicle inspected at Muffler and Brake Specialist in Merrill. Two Department investigators inspected the vehicle. The investigators discovered three problems which would have rendered the vehicle illegal to operate on Wisconsin highways. The three problems are:

- 1) The vehicle's floor pan beneath the driver's seat had a large rust hole leaving the seat unsecured in violation of Wis. Admin Code § Trans 305.21(2);
- 2) The inside of the driver's side fender had significant rust in violation of Wis. Admin Code § Trans 305.22(2); and,
- 3) The parking brake was inoperable in violation of Wis. Stats. § 347.35(1a).

In the opinion of the investigators, these problems should have been discovered by the Dealer during a reasonable pre-sale inspection.

8. After the inspection, the Department's investigator contacted the Dealer and attempted to mediate a settlement between Ogden and the Dealer. No resolution of Ogden's complaint was reached. On March 28, 2014, Ogden filed a claim against the Dealer's surety bond. The amount of the claim is \$8145.58, which is itemized as follows:

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|--|------------|
| 1) Cost of vehicle, title, and licensing           | \$4359.23; |
| 2) Repairs   | \$1283.15; |
| 3) Gas to get Lori [Ogden] home [from Missouri]    | \$243.20;  |
| 4) Meals during Lori's extended stay [in Missouri] | \$120.00;  |

- 5) [Cost to have Ogden's] Meds Fed exed [to Missouri] \$140.00;
- 6) Hardship \$2000.00.

9. Licensed motor vehicle dealers are required by Wis. Admin. Code § Trans 139.04(4) to disclose "significant existing mechanical defects" in used vehicles offered for sale. Dealers are required to disclose defects that can be discovered during a reasonable pre-sale inspection on a Wisconsin Buyers Guide form that is displayed on the vehicle at the time it is offered for sale. The rusted floor pan and fender, the inoperable parking brake, and the steering system components replaced by A-One should have been discovered during a visible inspection of the vehicle and should have been disclosed on a Wisconsin Buyers Guide displayed on the vehicle at the time it was offered for sale. Either the Dealer failed to perform a reasonable pre-sale inspection of the vehicle and discover these defects or, if a reasonable pre-sale inspection was performed, the Dealer failed to properly disclose the result of the inspection on the Wisconsin Buyers Guide.

10. The Dealer's failure to conduct a reasonable pre-sale inspection of the vehicle and/or accurately disclose any significant existing defects discovered during a pre-sale inspection on a Wisconsin Buyers Guide constitutes a violation of Wis. Admin. Code §§ Trans 139.04(5) and (6)(b). Violations of these sections, in turn, constitute a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). Ogden sustained a loss as the result of this violation.

11. Ogden's remedy in this matter should be reimbursement for the amount she paid to A-One and either damages in the amount of the cost to repair the remaining defects that should have been disclosed on a Wisconsin Buyers Guide or to rescind the transaction whichever is less. Ogden has not submitted documentation to support the cost of the remaining repairs so it is impossible to determine if these costs exceed the purchase price of the vehicle. However, based on the extent of the problems with the vehicle and also considering that the vehicle's odometer has been rolled back, it is reasonable to rescind the transaction. There is no evidence that the Dealer participated in or was aware of the odometer rollback. However, the fact that the odometer was rolled back makes calculating Ogden's damages difficult. Accordingly, the only way to ensure that Ogden is fully compensated is to rescind the transaction and require the Dealer to absorb any loss in value for the vehicle resulting from the odometer roll back.

12. Lori Ogden sustained a loss as a result of an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. She has submitted documentation to support a claim in the amount of \$5,642.38, the purchase price of the vehicle and the cost of the repairs completed by A-One. The other items on Ogden's claim, gas, meals, Federal express expenses, and hardship, are not clearly caused by the actions of the Dealer. Additionally, Ogden did not submit any documentation to support the amounts of these items. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the Liberty Mutual Insurance Company was in effect and is, therefore, a timely claim.

## DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. *[recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)]*.

. . . . .

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim filed against the security bond of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. With respect to Ogden's claim, the Dealer violated Wis. Admin Code § Trans 139.04. A violation of Wis. Admin Code § Trans 139.04, in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles). Wis. Stat. § 218.0116(1)(gm) is identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Lori Ogden sustained a loss as a result of this violation.

## CONCLUSIONS OF LAW

1. Lori Ogden's claim arose on October 29, 2013, the day she purchased the vehicle from the Dealer. The surety bond issued to the Dealer by Liberty Mutual

Insurance Company covers a one-year period commencing on March 31, 2013. The claim arose during the period covered by the surety bond.

2. Lori Ogden filed a claim against the motor vehicle dealer bond of the Dealer on March 28, 2014. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. Lori Ogden sustained a loss as the result of an act of the Dealer that would be grounds for suspension or revocation of the Dealer's motor vehicle dealer license. Ms. Ogden has submitted documentation to support a claim in the amount of \$5,642.38. Because Ogden is being reimbursed the purchase price of the vehicle and the amount she spent on repairs to the vehicle it would constitute unjust enrichment to allow her to also retain ownership of the vehicle. Accordingly, she will be required to surrender the vehicle to Liberty Mutual Insurance Company.

4. The Division of Hearings and Appeals has authority to issue the following order.

#### ORDER

The claim filed by Lori Ogden against the motor vehicle dealer bond of G and G Auto is APPROVED in the amount of \$5,642.38. Liberty Mutual Insurance Company shall pay Ms. Ogden this amount for his loss attributable to the actions of the Dealer. Upon receipt of the payment, Lori Ogden shall surrender possession and title of the vehicle to Liberty Mutual Insurance Company.

Dated at Madison, Wisconsin on December 16, 2014.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705-5400  
Telephone: (608) 266-7709  
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By: \_\_\_\_\_  
MARK F. KAISER  
ADMINISTRATIVE LAW JUDGE

## NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel  
4802 Sheboygan Avenue, Room 115B  
Wisconsin Department of Transportation  
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.